

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ALVARO CUEVAS)	
Claimant)	
)	
VS.)	
)	
MASTER CONSTRUCTION CORP.)	
Respondent)	Docket No. 1,023,531
)	
AND)	
)	
MISSOURI EMPLOYERS MUTUAL)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the May 9, 2007 Award by Special Administrative Law Judge (SALJ) John Nodgaard. The Board heard oral argument on September 5, 2007.

APPEARANCES

Dennis L. Horner, of Kansas City, Kansas, appeared for the claimant. Eric T. Lanham, of Kansas City, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument the parties agreed that the sole issue to be resolved in this appeal is whether Kansas has jurisdiction over this claim by virtue of K.S.A. 44-506. Thus, if jurisdiction is found, the parties agreed that the Award can be summarily affirmed.

ISSUES

The SALJ concluded under these facts and circumstances that claimant's principal place of employment was within the State of Kansas and therefore, under K.S.A. 44-506, jurisdiction was proper. Accordingly, he awarded claimant a 57 percent work disability.

Respondent has appealed arguing that the greater weight of evidence established that claimant's principal place of employment was the state of Missouri rather than Kansas. Therefore this Court has no jurisdiction in this case and the Award should be reversed.

Claimant argues that the Award should be affirmed in all respects as the evidence establishes that over the past 20 years claimant's principal place of employment was Kansas and not Missouri, as respondent contends.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The Board finds that the Special Administrative Law Judge's findings of fact are detailed, accurate, and supported by the record. The Board further finds that it is not necessary to repeat those findings and conclusions in this order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings as its own as if specifically set forth herein.

K.S.A. 44-506 provides in pertinent part:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: *Provided*, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) **The principal place of employment is within the state**; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides. . . (emphasis added)

The legislative history establishes that the phrase "principal place of employment" refers to the employee's principal place of employment.¹ Unfortunately, in the context of a case such as the one here when the claimant's work history spans a number of years, neither the history nor case law sheds any light on whether the employee's principal place of

¹ *Knelson v. Meadowlanders*, 11 Kan. App. 2d 696, 732 P.2d 808 (1987).

employment is a function of time or task, nor is there any indication as to what period of time should be examined. In other words, is the determination made based upon the number of jobs or the time spent performing those jobs and over what period of time should be considered?

As found by the ALJ, the invoices produced by respondent show that numerically speaking, during the year 2003², claimant completed approximately one-third of the invoices for work in Kansas and the remaining two-thirds for Missouri work. Assuming that just the year 2003 is relevant and assuming the bookkeeper's conclusion as to the author's handwriting is accurate, this would certainly suggest that Kansas is not the primary location of claimant's work. But the invoices seem to bring up more questions than they answer. For example, there are a great number of other invoices completed by other individuals that were for work in Kansas that may or may not have involved claimant. Unfortunately the invoices themselves do not show each worker involved in the project. And the record fails to disclose the extent of time involved to do any of these jobs. Moreover, claimant was also employed to perform plumbing repairs on the houses personally owned by Vernon Fraley and Connie Fraley, his wife and bookkeeper, in both Kansas and Missouri. And the number of times involved he was required to do those repairs, both in Kansas and Missouri, are not reflected in the invoices produced by respondent.

Claimant testified that he spent 70-80 percent, maybe more, of his time in Kansas working for respondent.³ He would get up each morning and take his job directions from respondent's owner, Vernon, over the phone and then proceed to the house(s) where he was to work. He was given a van to drive to and from each house where he was working and to the respondent's shop. The van was driven home each night and housed at claimant's home, in Kansas.

Claimant's co-worker, Francisco Contreras, confirmed claimant's perception that claimant worked more in Kansas rather than Missouri, although by a lesser margin.⁴ Mr. Contreras also confirmed that the invoices proffered by respondent do not always reflect the identities of each individual that might work on any given job. In other words, claimant might have worked on some of the jobs whose invoices were written up by a coworker. Mr. Contreras and claimant worked closely together for 14 years but in the last few years, he and claimant had separate trucks and worked together less. So his knowledge as to claimant's work activities in the last few years was somewhat limited.

Connie Fraley testified that respondent did not do many Kansas jobs. She further testified that claimant would be at respondent's office in Missouri at the beginning of most

² This is the last year claimant worked for respondent.

³ R.H. Trans. at 32.

⁴ Contreras Depo. at 9.

work days and would also have to deliver paperwork and payments from customers to her during the day at the office in Missouri. Ms. Fraley confirmed that the van provided to claimant was owned by herself and her husband and was titled in Kansas. She seemed to contend that claimant had to come in to the office to get his work assignments each day, but she also seemed to distance herself from this process. When asked about claimant's assertion that her husband, Vernon Fraley, would call claimant on the cell phone each morning and tell him where he would be working that day, Mrs. Fraley responded by saying "I think he would have to come into the office more because we did not do that many Kansas jobs"⁵, her theory being most of their jobs were Missouri jobs so it made sense to her that claimant would come to the Missouri office first.

The SALJ found the invoices themselves were not persuasive because they only reflected activities during the calendar year 2003. Respondent suggests that this year "look back" period is a reasonable method to determine the claimant's principal place of work for purposes of the Act.

The Board agrees with the SALJ's conclusion that the invoices themselves, at least for the year 2003, do not, standing alone, answer the dispositive question. These invoices do not give any insight on the amount of time spent performing the activities reflected in the invoices. So, while numerically speaking more invoices were generated from Missouri work, that alone does not answer the question as to how much time claimant spent while in Kansas performing work. These invoices do not show the jobs claimant worked on *in either Missouri or Kansas* for which he did not generate an invoice, either as a helper or on the rental houses owned by Mr. and Mrs. Fraley. Only claimant answers that question. And he responded by saying it was 70-80 percent. His coworker confirmed this, at least by saying that he and claimant worked *more* in Kansas than in Missouri.

Ultimately the SALJ concluded claimant's principal place of business was Kansas and after considering the record as a whole, the Board agrees and affirms this finding. The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.⁶ The Board holds that based upon this record, it is more probably true than not that claimant's principal place of business was Kansas. Accordingly, there is jurisdiction for this claim and the SALJ's Award is affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Special Administrative Law Judge John Nodgaard dated May 9, 2007, is affirmed.

⁵ Fraley Depo. at 11.

⁶ K.S.A. 44-501(g).

IT IS SO ORDERED.

Dated this _____ day of September, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Horner, Attorney for Claimant
Eric T. Lanham, Attorney for Respondent and its Insurance Carrier
John Nodgaard, Special Administrative Law Judge
Robert H. Foerschler, Administrative Law Judge